IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1163 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HINDUSTAN SALTS LTD

Versus

NOORADRAJ M PATHAN

Appearance:

1. Special Civil Application No. 1163 of 1995

MR PRANAV G DESAI for Petitioner No. 1

MR SHAILESH C PARIKH for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 03/03/2004

ORAL JUDGEMENT

1. Heard learned advocate Mr.Pranav G. Desai on behalf of the petitioner and learned advocate Mr.Shailesh Parikh for respondent - workman.

Today, this Court has allowed Misc. Civil Application No.293 / 2004 in SCA No.1163 / 1995 restoring this petition to its original file with all reliefs attached to the file and thereafter, with the consent of the learned advocates for the respective parties, this Court is inclined to hear and dispose of the present petition by this judgment and order.

2. The petitioner - Hindustan Salts Ltd. has challenged the order passed by the Labour Court, Surendranagar vide Exh.10 in Reference No.14 / 1991 dated 8th January, 1995, whereby the labour court, Surendranagar came to the conclusion that the departmental inquiry conducted against the workman is contrary to the principles of natural justice and vitiated. This Court, initially, issued Rule on 24th February, 1995 and by interim order stayed order of the order in question vide Exh.10 passed by the labour court, Surendranagar till further order. It is relevant to observe that the order passed by this Court is an exparte order. Affidavit-in-reply is filed by the respondent. Against which, Rejoinder is also filed by the petitioner - company and further Sur-rejoinder is also filed by the respondent - workman. In short, affidavit-in-reply, rejoinder of the petitioner and Sur-rejoinder of the workman are on record of the petition. The petitioner has produced xerox copy of the inquiry papers. The petitioner has also produced affidavit of Shri Bhawansinh Nagaba Zala at Exh.25 which is at page.19.

Learned advocate Mr.P.G.Desai has challenged the impugned order before this Court on various grounds.

3. At the outset, it is necessary to highlight certain shocking facts of the present petition and it is nothing but a glaring example in labour jurisprudence to the effect that how the workman is subject to legal harassment by way of filing proceedings before this Court. Charge levelled against the workman, reads as under;

"The Charge : The Works Manager, Khanraghoda served Memoraundum No.LC/ IX / 89 / 2662 dated 22nd May, 1989 on Shri Noordaraj M. Pathan, Daily Paid Labour, Kharaghoda, wherein vide annexure-I a statement of article of charges framed against Shri Nooraraj M. Pathan was annexed. Vide Anneuxre-I the charges are :

"1. Shri Noordaraj M.Pathan, Labour ID Plant,

was working in the ID Plant of the Company in the first shift. On 12th May he was standing near the bags shed of the Company at about 11.30 AM and when at that time Shri S.H.Makandar, who is the Inspector Incharge of first shift of ID Plant was going in recess for taking his lunch, Shri Noordaraj M. Pathan on the way near bags shed abused Shri Nakandar and threatened him to kill and started bearing him causing injury to his right elbow.

The above act of Shri Noordaraj M. Pathan, Labour ID Plant is in contravention of rule No.10[a] [k] [1] of certified standing orders of the Company applicable to him.

2. Shri Noordaraj M. Pathan, Labour ID Plant came on duty at 6.00 AM on 12.5.89 but remained absent from 10.00 Hours onwards without any cause and obtaining prior permission from his supervisors or giving any application for the same.

The above act of Shri Noordaraj M. Pathan is in contravention of rule 19 [a] & [m] of the Certified Standing Orders of the Company applicable to him."

It is to note that since the inquiry officer has come to the conclusion that charges found to have proved against the workman, the workman came to be dismissed from service on 6th September, 1990, against which, departmental appeal was filed, which ultimately remained pending and not decided by the petitioner.

4. Thus, for the charges above, dismissal order has been passed against the respondent workman. Against which, the workman has raised industrial dispute being Reference No.14 / 1991 in the year 1991 which was referred for adjudication to the labour court, Surendranagar. The statement of claim was filed by the workman and written statement was submitted by the petitioner. Certain documents have been produced by both the respective parties before the labour court. Vide Exh.25 one Shri BHAGWANSINH ZALA has filed affidavit who was cross examined by the respondent - workman. One application is filed vide Exh.10 by the respondent workman before the labour court raising contention that departmental inquiry which has been conducted by the petitioner against the respondent workman is not legal and valid and it is contrary to the principles of natural

justice. Against the said application, reply is filed by the petitioner before the labour court. Ultimately, before the labour court, the workman was examined vide Exh.18 and one Shri BHAGWANSINH ZALA was examined vide Exh.25. No witness was examined before the labour court in respect of the preliminary point on behalf of the petitioner. The petitioner has produced papers of the departmental inquiry before the labour court. Thereafter the labour court has examined the issue being the preliminary issue, whether the departmental inquiry is legal and valid or not, and whether it is in accordance with the principles of natural justice or not. Ultimately, the labour court has come to the conclusion by order dated 8th January, 1995 that inquiry is vitiated and it is contrary to the principles of natural justice and thereafter the matter has been kept for further hearing on 23rd February, 1995. The matter has remained pending before this Court for more than nine years. From the date of dismissal, more than 13 years have elapsed till date. The workman is not able to get adjudication from the labour court in respect of his dismissal order which came to be passed on 6th September, 1990 and that is how the workman who is real sufferer not even able to get adjudication of his dismissal order. Who is responsible for this delay, who will bear burden and who will compensate the workman for this long unemployment period, facing starvation, resulting into ruin of the family, so also, the education of the children. There is no provision made under the Industrial Disputes Act and no other alternative remedy for awarding compensation for unemployment period, in case if the workman succeeds in the Reference proceedings after adjudication, to see that the family which suffered and children who suffered on account of education for not getting proper education and starvation position of the family. Merely grant of backwages, at the end of the proceedings when the workman succeeds, is not suffice and complete relief which is usually being granted by the labour court. In the instant case, the workman is out of job, rightly or wrongly, has to be examined by the labour court, but, the same is not examined within reasonable time, then, the ultimately, after getting result in favour of the workman, merely getting backwages of the interim period, is not enough to give compensation to the workman for facing hardships not only by the workman but by the entire family including the children on account of prosecuting their education and other many problems that may be faced by the workman during the period of unemployment. When the workman is out of job, even the neighbour will not lend petty amount to such employee as he is not working. What happened to his status in the

society with stigma that he is a dismissed employee. These are all hard realities and related questions, require to be examined and appreciated by the Court whether Court is entertaining such petition against the interim order passed by the labour court. That is how, normally, while exercising the powers under Article 226 and 227 of the Constitution of India, such petition wherein challenge against the interim order, is not being entertained by this Court and such petition should not be entertained by this Court while exercising the powers under Article 226 and 227 of the Constitution of India. The Apex Court has in various decisions, taken such view. The difficulty which has been faced by the workman that while admitting the matter, this Court has granted stay, in other words, further proceedings of the pending Reference has been stayed and therefore, no further adjudication for last nine years and the workman is out of job for more than 13 years. In this background, this Court has an opportunity to examine the matter.

5. When this matter is taken up for hearing and discussed to some extent, at that juncture, this Court has suggested to the learned advocate Mr.P.G.Desai that this being interim order on preliminary issue, this Cout will grant liberty in favour of the petitioner company to challenge the impugned order at the time of final conclusion if it is ultimately goes against the petitioner and the petitioner may not press this petition at this stage. The intervention of this Court does not end here. But this Court has shown to the learned advocate Mr.Desai a decision of the Apex Court in case of Cooper Engineering Ltd. v. P.P. Mundhe reported in AIR 1975 SC 1900 wherein the Apex Court has held that petition against the order on preliminary issue, should not be entertained. However, learned advocate Mr.P.G.Desai submits that since he has no instructions, he would like to argue the matter on its merits. But the reality is, knowing fully well the decision on this very point and the law laid down by the Apex Court, the matter is argued on merits by the learned advocate Mr.P.G.Desai. Therefore, in such situation, this Court has no option but to give patient hearing to the learned advocate Mr.Desai and it is done so by this Court. This Court has heard learned advocate Mr.P.G.Desai at length without any interruption and given patient hearing to make out the case of the petitioner on its merits. Learned advocate Mr.Desai has read over before this Court the order in question in repsect of the preliminary point. He referred each and every paper of inquiry papers and pointed out that on each page, the defence assistant has signed the papers and there is specific endorsement to

that effect on each occasion that English version has been translated into Gujarati and given understating to the concerned workman and hence, there is no denial of principles of natural justice in the present proceedings. He also submitted that over and above, affidavit of Shri BHAGWANSINH ZALA has been filed vide Exh.25 which is also supported the case of the petitioner who was cross examined by workman. After reading and showing all the papers, contention of the learned advocate Mr.Desai that departmental inquiry is properly held and proper representation was given to the workman and on each occasion, he has signed the papers and in presence, the entire departmental inquiry was conducted and completed. Therefore, view taken by the labour court in respect of the preliminary point that departmental inquiry is vitiated as it violated the principles of natural justice, is erroneous which requires to be interfered with by this Court while exercising the jurisdiction under Article 226 and 227 of the Constitution of India.

6. Learned advocate Mr.Shailesh Parikh appearing on behalf of the respondent workman has submitted that the workman is out of job since 1990. The order passed by the labour court below Exh.10 in 1995 and at present in the year 2004, now this matter is taken up by this Court. He also submitted that the labour court has rightly gone through inquiry papers and appreciated the facts and come to the conclusion that it is not fair inquiry or inquiry which has not satisfied the conscience of the Court and therefore, the labour court has while appreciating the record and affidavit of Shri BHAGWANSINH ZALA, rightly come to the conclusion that proper defence assistance was not available to the workman inasmuch as it was in English language which was not understood by the workman, nor it was properly made understood by the Defence Assistant. Therefore, according to learned advocate Mr.Parikh, the view taken by the labour court is perfectly right and inquiry conducted by the petitioner is contrary to the principles of natural justice. He also pointed out other aspects that after vitiating the inquiry,the labour court has given an opportunity to the petitioner to prove misconduct against the workman by leading proper fresh evidence and ultimately if the petitioner is able to justify their action and prove misconduct against the workman, the whole reference will be decided against the workman and it would not necessitate to pass any order in respect of the preliminary point. Therefore, he submitted that the view taken by the Apex Court in COOPER ENGINEERING LTD case is squarely applicable in the facts of the present case and therefore, this petition should not be entertained by

this Court while exercising the powers under Article 226 and 227 of the Constitution of India and the same may be dismissed in the interest of justice.

7. I have considered submissions made by the learned advocates for the respective parties. The Apex Court has, in number of cases, taken a view not to entertain petition against the interim order of preliminary order passed by the labour court or the Industrial Tribunal. The reason behind is that by challenging such interim order or order on preliminary issue, whole proceeding has been stayed by means of such petition which ultimately adversely affect the rights of the person who is not able to face the situation but it will not affect adversely to the persons who are competent and capable to maintain their family. Therefore, the Apex Court has on number of occasions deprecated such practice to entertain such petition by this Court against the interim order and preliminary order. Now, in respect of this aspect, learned advocate Mr.Desai raised certain contentions on merits that finding given by the labour Court is contrary to the record and it is baseless and perverse finding. The labour court has not considered the affidavit filed by Shri BHAGWANSINH ZALA Union representative vide Exh.25 at page.19. He also pointed out certain incorrect statement made by the workman that initially he made statement and subsequently he changed the version and pointed out conduct of the workman and contended that the intention of the workman is not good. He referred to page.22 and 23 of the inquiry papers and submitted that Shri BHAGWANSINH ZALA was appointed by the workman not by the company and on each occasion, said Shri BHAGWANSINH ZALA was remained present and Shri BHAGWANSINH ZALA has properly assisted the workman translating the version from English to Gujarati and to that effect, each paper bears signature. Therefoer, he submitted that finding given by the labour court is contrary to the record, baseless and perverse.

8. I have gone through the order passed by the labour court below Exh.10 which is at page.58-62 of the petition dated 8th January, 1995. The labour court has given details in para-1 to 5. The finding is given by the labour court in para-6. The labour court has raised some suspicion against the conduct of Shri BHAGWANSINH ZALA. Therefore, the labour court has observed that actually what role has been played by Shri BHAGWANSINH ZALA while acting as defence assistant with the workman that is required to be known by the Court. The first aspect which has been examined by the labour court that there is no provision in the Rules to appoint an outsider

as Defence Assistant, even though, the company has given permission to the workman to engage Shri BHAGWANSINH ZALA being defence assistant who is not an employee of the petitioner. Affidavit Exh.25 which is page.19 produced by the petitioner and not by the workman. This affidavit has been considered in detail by the labour court in para-6. In cross examination, there is no such averment made by said Shri BHAGWANSINH ZALA that in papers of the departmental inquiry, he was engaged as representative of the workman except that there is no other note made in the departmental inquiry, as admitted. Statement Exh.11/1 was produced in the company or not, he was not aware about that fact. He also deposed that in departmental inquiry, whatever witnesses were examined, he translated their evidence. That his cross examination was recorded on 13th December, 1993. Except that, no other witness was examined by the petitioner before the labour court. In para-6 of the order, after narrating this fact of the affidavit, there comes cross examination of Shri BHAGWANSINH ZALA and the labour court has examined further to the effect that Shri BHAGWANSINH ZALA being the defence assistant is required to properly defend the workman in departmental inquiry. In departmental inquiry, cross examination of the witness of the company has been mentioned but who has cross examined, does not transpires, nor it is stated anywhere. These all statements were in English. That on 20th June, 1990 two witnesses were produced and examined, thereafter on 21st and 22nd, one and two witnesses were produced and examined respectively and on 23rd June, 1990 one more witness was produced, meaning thereby, whatever statements were obtained by the company at the time of preliminary inquiry, that statements were placed on record and merely one question was asked to him, whether they are admitting the statement or not. But the answer given in affirmative and thereafter immediately, said persons were put to cross examination but that cross examination has been made by whom, no name has been mentioned in departmental inquiry proceedings papers. All the papers of the departmental inquiry, wherein signature of the workman was obtained but in all letters / papers of the inquiry, whether Shri BHAGWANSINH ZALA has really cross examined the witnesses as defence assistant or not, that part there is no mention in the departmental inquiry. That there is no mention about Shri BHAGWANSINH ZALA in the departmental inquiry. That in some of the papers, there is no signature of Shri BHAGWANSINH ZALA and there is no identification also mentioned in the inquiry papers. Witnesses are only aware about the fact that their statements were recorded at the stage of preliminary inquiry. Who has translated

the statement or evidence, there is no mention, nor any name given and as such, no details have been given in departmental inquiry and therefore, ultimately, the labour court has come to the conclusion that after examining in detail that whole inquiry is not satisfying the conscience of the Court and it is not held in accordance with the principles of natural justice. The labour court has also considered certain other aspects about statement of the witnesses in para-8. Statements of the witnesses Exh.20 to 30 were recorded and these statements were not recorded in presence of the workman. These statements were recorded in which language, is also not mentioned in the departmental inquiry. One statement was in English and Hindi language, wherein there found signature of Shri Kalu Chhagan. Statements of some other workman were also recorded in Hindi and signature of the workman was obtained. Ultimately, the labour court has come to the conclusion that whole departmental inquiry is conducted in English language and who has conducted cross examination, does not transpire from anywhere and as such, no names come on record that who has translated the entire proceedings. The labour court has also drawn the inference that the workman does not understand Hindi properly but despite of this fact, his statements in the preliminary inquiry were recorded in Hindi language and having called him later on, his thumb impressions were obtained. Therefore, the conclusion of the labour court that if such things happened in the departmental inquiry, in that case, it cannot be believed that the departmental inquiry has been done in accordance with the principles of the natural justice. Therefore, considering the entire facts and circumstances and after appreciating the evidence on record, the labour court has come to the conclusion that the departmental inquiry is vitiated.

9. I have perused the entire order as well as the affidavit of Shri BHAGWANSINH ZALA and cross examination. These are finding of fact recorded by the labour court while appreciating the documents and evidence on record. It is relevant to note that this Court has limited jurisdiction to reappreciate the same evidence which was appreciated by the labour court. This Court cannot act as an appellate authority and even when two views are possible, this Court cannot exercise the powers under Article 226 and 227 of the Constitution of India. Even this Court cannot make any critical analysis of the order passed by the labour court as per the view taken by the Apex Court in reported decision 2003 [9] SCC 592. The relevant Head Note [h] is referred as under :

"H. Administrative Law - Judicial review

Nature, extent and possibility of Decision-making process and not the decision itself is amenable to judicial review - Critical or independent analysis or appraisal of materials by court not permissible - Person aggrieved must sufficiently establish his grievances before the Court Exercise of power by the authority concerned must be shown to have violated any provisions of the Constitution or statutory rules - Constitution of India, Art.32."

"Judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the material by the Courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions. Grievances must be sufficiently substantiated to have firm or concrete basis on properly established facts and further proved to be well justified in law, for being countenanced by the court in exercise of its powers of judicial review. Unless the exercise of power is shown to violate any other provision of the Constitution of India or any of the existing statutory rules, the same cannot be challenged by making it a justiciable issue before Courts."

10. Recently also, the whole aspect has been reiterated by the Apex Cout in case of SURYA DEV RAI V. RAM CHANDER RAI & ORS reported in 2004 [1] GLR 320. The Apex Court has observed that where the error in the impugned order is capable of being corrected by a superior Court in exercise of appellate or revisional jurisdiction, albeit at conclusion of the proceedings, it would be sound exercise of discretion for High Court to refuse to interfere with such orders. Therefore, considering the principle laid down by the Apex Court in above referred decision and the order passed by the labour Court below Exh.10, according to my opinion, the labour court has not committed any error which requires any interference by this Court while exercising the powers under Article 227 of the Constitution of India.

11. However, before parting with the judgment, this Court would like to highlight the view taken by the Apex Court in identical facts and similar situation in case of

COOPER ENGINEERING LTD V. P.P.MUNDE reported in AIR 1975 SC 1900. The relevant observations made by the Apex Court in the aforesaid case in para-22 are reproduced under :

"22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue.. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the labour court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

12. Thus, it is clear that there will be no justification for any party to stall the final adjudication of the dispute by the labour court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. Not only that but the Apex Court has expressed in clear terms that "We are making these observations in our anxiety that there is no undue delay in industrial adjudication." However, it is reluctant to note that looking to the facts of this case, it is considered that the anxiety expressed by the Apex Court stands meaningless.

13. This aspect has also been examined by the learned Single Judge of this Court in case of CADILA HEALTHCARE LTD V. UNION OF INDIA AND OTHERS reported in 1998 [2] G.L.H. 513, wherein it is observed that challenging

interlocutory order, order not deciding the case finally, in that event, even if the interlocutory order is illegal, in absence of failure of justice and in view of the right to challenge the said order when it becomes final, petition against the interim order not maintainable. Relevant observations made in para-11 are referred as under :

"11. The matter is yet to be examined from another angle. From the scheme of the Act, 1958, it transpires that the application for registration of trade marks has to be disposed of expeditiously. Otherwise also, leaving apart the scheme of the Act aforesaid whether it is a proceeding before the Civil Cout or Criminal Court or before this Court or even before any quai-judicial authority or administrative authority, the same has to be disposed of expeditiously. This object, as well in some of the cases the mandate of the statute, can only be achieved or attained where the Courts which are having powers of superintendence or extraordinary powers under Article 226 of the Constitution of India, do no permit the parties to stall the final adjudication of the matter by questioning the decision of the authorities with regard to interlocutory matters when the matter, if worthy, can be agitated even after final orders are passed. I consider it to be fruitful here to make reference to the decision of the Apex Court in the case of The Cooper Engineering Ltd. P.P.Mundhe, reported in AIR 1975 SC 1900. The Apex Court, in this case, held :

"10. In Management of Ritz Theatre (P) Ltd. v. Its workmen (1), this Court was required to deal with rather ingenious argument. It was contended in that case by the workmen, in support of the tribunal's decision, that since the management at the very commencement of the trial before the Tribunal adduced evidence with regard to the merits of the case it should be held that it had given up its claim to the propriety or validity of the domestic enquiry. While repelling this argument this court made some significant observations:

"In enquiries of this kind, the first question which the Tribunal has to

> consider is whether a proper enquiry has been held or not. Logically, it is only where the Tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the finding recorded at such an enquiry are perverse, that the Tribunal derives jurisdiction to deal with the merits of the dispute...
>
> If the view taken by Tribunal was held to be correct, it would lead to this anamoly that the employer would be precluded from justifying the dismissal of his employee by leading additional evidence unless he takes the risk of inviting the Tribunal to deal with the merits for itself, because as soon as he asks for permission to lead additional evidence, it would follow that he gives up his stand based on the holding of the domestic enquiry. Other wise, it may have to be held that in all such cases no evidence should be led on the merits unless the issue about the enquiry is tried as a preliminary issue. If the finding on that preliminary issue is in favour of the employer, then, no additional evidence need be cited by the employer; if the finding on the said issue is against him, permission will have to be given to the employer to cite additional evidence".

14. This Court is inclined to referred the aforesaid two decisions just to remind that the anxiety expressed by the Apex Court that unnecessary undue delay may not occur in adjudication of Reference which relate to dismissal pending before the labour court at such preliminary point.

15. In view of above observations, I am of the opinion that there is no substance in the present petition and same is dismissed accordingly. Interim relief stands vacated with direction to the labour court concerned to complete the adjudication of Reference No.14 / 1991 finally within a period of six months from the date of receipt of writ of this Court.

Rule stands discharged with no order as to costs.

Date : 3.3.3004 [H.K.Rathod, J.]

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